IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.323 OF 2004

Shri Shantinath Padmanna Mudhale
since deceased through his LRs
1-A. Prakash Shantinath Mudhale & Anr. ..Appellants

Versus

Smt. Akkatai Bandu Bhivate & Ors. ..Respondents

Mr.V.B.Rajure for appellants

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.

1. The appellants have preferred this appeal against the judgment and order passed by 4th Additional District Judge, Kolhapur dismissing appeal and confirming the order passed by Joint Civil Judge, Junior Division, Kolhapur dated 28th August 2000 decreeing the suit for partition and separate possession of the shares of the respective parties.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The suit was filed for partition and separate possession by plaintiffs on the allegation that the property involved was joint family property. On adjudication of the dispute the learned trial judge came to the conclusion that the suit property was ancestral property and plaintiffs had 1/4 share therein and were entitled to separate possession thereof. The defendant no.2 was also held to have proved her 1/2 share in the suit property. The contention of the defendant no.1 that he had become owner by adverse possession was discarded as redundant and main contention of appellant-defendant no.1 to the effect that he had ousted the plaintiffs from the suit property in the year 1960 and 1964 and therefore the suit was within limitation, was held not proved and the suit came to be decreed accordingly. The appeal was carried to the District Court, Kolhapur. The learned Addl. District Judge after hearing both the parties endorsed to the correctness to the findings recorded by the learned trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that the only question raised in this appeal at this stage is regarding so-called alleged ouster by the appellant-defendant no.1 of all the sharers in the suit property. However, the evidence on record is sufficient to establish that the defendant no.1 did not succeed in establishing the factum of ouster of all the sharers in the year 1960 and 1964. In order to support his claim the appellant examined two witnesses, however, they were found to be unreliable by both the courts below for the reasons recorded by them. As against this, the plaintiffs led voluminous evidence to establish the fact that property involved was joint family property and the parties were having shares therein.

5. In the result it is clear enough that there is no substantial question of law involved in this appeal and the factual aspects of the evidence on record are properly appreciated and adjudicated. In the result the appeal has no merit and therefore stands dismissed.

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